

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CHILI EXPRESS, INC.,

Plaintiff,

-against-

ATLANTIC CASUALTY INSURANCE CO.,

Defendant.

Case No.: 16-6607

NOTICE OF REMOVAL

To the Judges of the United States District Court for the Western District of New York:

Pursuant to 28 U.S.C. § 1441 and 28 U.S.C. § 1446, defendant Atlantic Casualty Insurance Company (“Atlantic Casualty”) hereby gives notice of the removal of this action from the Supreme Court of the State of New York, County of Monroe. In support hereof, defendant states:

1. Atlantic Casualty is the defendant in a civil action brought in the Supreme Court of the State of New York, Monroe County, entitled Chili Express, Inc. v. Atlantic Casualty Insurance Co. (the “State Court Action”).

2. An index identifying each document filed and/or served in the State Court Action, along with each document so filed and/or served, except for discovery materials, individually tabbed and arranged in chronological order are annexed hereto as **Exhibit A**.

3. Atlantic Casualty has not responded to the complaint in the State Court Action.

4. Plaintiff Chili Express, Inc. (“Plaintiff”) commenced this lawsuit seeking judgment against Atlantic Casualty for alleged damages arising out of a January 18, 2015 fire at 989 Chili Avenue, Rochester, New York. Plaintiff seeks to recover such damages under an insurance policy which has been rescinded.

5. Atlantic Casualty first received a copy of Plaintiff's Summons and Verified Complaint on or after August 5, 2016. The within Notice of Removal is timely as it is being filed within thirty (30) days of Defendant's receipt of the summons and complaint in this matter.

6. Federal jurisdiction exists on grounds of diversity under 28 U.S.C. § 1332(a)(1). In particular, this controversy is between citizens of different states, in that Plaintiff is a citizen of New York, where, according to plaintiff's complaint has a principal place of business in Rochester, Monroe County, New York. Defendant Atlantic Casualty is a citizen of North Carolina.

7. Additionally, the amount in controversy exceeds \$75,000. Plaintiff seeks insurance coverage for unspecified property damage under a policy of insurance allegedly issued by Atlantic Casualty. Plaintiff's Complaint alleges that "the total loss sustained by the Plaintiff by reason of said fire was more than the sum of \$75,000.00...." Complaint at ¶6.¹ Additionally, while Plaintiff's Complaint demands \$75,000, in order for Plaintiff to receive any award in this lawsuit, the Court would first need to find that the subject insurance policy has not been rescinded or to reinstate the policy, exposing Atlantic Casualty to the full policy limits, which includes a liability limit of \$1,000,000 per occurrence / \$2,000,000 in the aggregate.

8. Plaintiff's complaint does not contain a jury demand.

9. Atlantic Casualty Insurance Company is the only defendant to this action.

WHEREFORE, defendants Atlantic Casualty Insurance Company prays that this case proceed in this Court as an action properly removed thereto.

Dated: White Plains, NY
August 31, 2016

KEIDEL, WELDON & CUNNINGHAM, LLP

¹ Although the *ad damnum* only requests \$75,000.00, it is not clear whether Plaintiff may intend to later request damages beyond the *ad damnum*. In this regard, we note that, while the property limit for the subject policy would have been \$75,000 had it not been rescinded, the policy, before it was rescinded, also contained additional coverages which, if applicable, would have brought the limits up to approximately \$96,000, subject to a \$2,500 deductible.

By: /s Stephen C. Cunningham
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